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AUTHOR Howe, Jonathan T.
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ABSTRACT

Negotiations with school employees should be limited to salaries, fringe benefits, and negotiation procedures, at least until the parties become familiar with the process of negotiation. It is better to delineate specifically those items that are negotiable. Boards, in defining negotiable subject matter, should be cautioned in agreeing to any words or phrases that might commit them to bargaining over important school district policy. (Author/MLF)

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LAW OFFICES
JENNER & BLOCK
ONE IBM PLAZA
CHICAGO, ILLINOIS 60611
(312) 222-9350

JONATHAN T. HOWE

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Presentation of Jonathan T. Howe
"Collective Bargaining"

"What's Negotiable"

Illinois, to date, is happily backward; we have not been blessed to date with a collective bargaining law either applicable to public employees or more importantly, to school teachers. At least that's the editorial opinion of some. The fact is true - there is no public employee bargaining act, but being "blessed" that's another matter.

On a nationwide basis, statistics have shown, however, that two out of every three school employees are union members. In the March 28, 1975, Washington Fast Report, distributed to direct affiliate members of the National School Boards Association, a notation was made that the Department of Labor had concluded that school employees and other state and local governmental workers are better organized than are private sector workers. This was based upon a 1972 Federal census of state and local governments. While only one quarter of all private sector workers are union members, the study found that more than one half of all state and local government employees are members of labor organizations, including a solid 68% of all school employees.

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Statistics showing substantial union membership among public employees appear to weaken the arguments on one hand that collective bargainning legislation is needed to give public employees the union protection enjoyed by private sector workers. That argument, on the other hand, fails to recognize sometimes the need for a mandatory dispute settling device to handle those problems related to the employer - labor union situation. This is because the same report also indicates that school employees are more prone to strike and negotiate written contracts then are any other government workers. Of the nearly 20,000 contracts and other labor agreements in effect in 1972, some 52% of those governed school employees. Of the 347 reported work stoppages affecting state and local governments in 1972, 178 of those were by school employees.

In many states, as other speakers will demonstrate, we have state legislation relative to the negotiating process. Why do the National Education Association and the AFT want a Federal collective bargaining law? Very simply, to bring those states, such as Illinois which do not presently have collective bargainning laws, under the thumb of such legislation.

Presently, in the Illinois General Assembly, there are a number of bills which have been introduced for purposes of collective bargaining in the public sector.

One proposed bill would limit the concept of negotiation in Illinois only to "salaries, hours and other terms and conditions of employment." Under this proposal, that phrase,

is specifically limited and states that Boards of education shall not be required to negotiate, with respect to matters of inherent managerial policy which are to include, but are not limited to:

1. The determination of the educational philisophy and the goals of the school district;

2. The definition and implementation of educational activities;

3. The determination of the content of courses and curricula;

4. The selection of texts and other teaching material;

5. The determination of teaching methodology to be employed;

6. The budget of the school district;

7. The final decisions on discipline and/or expulsion of students;

8. The direction of teacher's activities, including, but not limited to, the right to direct, control, and schedule all of the services to be performed on behalf of the board;

9. The hiring, promoting, classifying, transferring, retaining, suspending, demoting, discharging, or other disciplining or relieving from duty of any employees;

10. The judging of the efficiency and competency of any employee;

11. The making and enforcing of school rules and regulations;

12. The right to expand, contract, terminate or otherwise modify the existing operations of the school district;

13. The right to introduce new educational technology and to maintain and/or improve the efficiency of the district in any manner deemed desirable by the board.

In the private sector, the hardest fought battle during the collective bargaining process is generally the management perogative or rights section. It is that section which delineates those items which are not negotiable or subject to collective bargaining under any circumstances because they are matters which certainly relate to management. That line has become distinctively "fuzzed" with recent court decisions and decisions by the National Labor Relations Board. The same "fuzzing" is true in school negotiations - what are the perogatives of the Board of Education?

It has been my experience that where community support is an essential element to either the position of the Board or to the faculty, that the faculty will always win if the Board has failed to meet its responsibilities in providing an outstanding educational program to the extent possible. There is nothing that a teachers union loves more than to point out that the school board, because they are not educational "professionals" like the teachers are, is incapable of handling the major items of educational programming and planning. "Only the teachers are concerned. The Board can't see the needs of your children." But, when you strip away all the rhetoric as to what is "negotiable" and what

is not "negotiable" and you strip away the holier than thou pretenses of who has the interests of the children at heart, in the final analysis,it always relates to one item - what is going to be in the best economic interest of the teacher; not necessarily in the best interest of the school district or the educational program. It's money or more money for extra duties.

In Illinois, because we do not have collective bargaining as yet, the Illinois Education Association, an affiliate of the National Education Association, has designed what we call a ("Level Four") contract which they submit for purposes of negotiation with school boards.

Having just recently concluded bargaining the non-economic items of the 1974-75 contract for my district, I am painfully aware of some of the provisions that are demanded today by the Illinois Education Association. They have said that the area and subjects of negotiation should include all matters which affect "salary, fringe benefits, conitions of employment, grievance procedures and other matters of mutual concern." While this seems modest, as we will see, there are inherent dangers in this definition.* If possible, when confronted with such "simple" language, you should attempt to limit negotiations

* In our district, this year we separated the "economic" from the "non-economic" aspects of our negotiations. Some would say that this is undesirable because of a possible "trade off" situation being lost. However, I have never seen that you can trade off a non-economic items with an economic one and visa versa.

As far as the majority of teachers is concerned, the non-economic items are for the most part totally immaterial. These generally relate to such things as association rights to use mailboxes for purposes of putting notices in them about associations matters, etc.

at least until such time as the parties become familiar with the process of negotiations, to only salaries, fringe benefits, and negotiation procedures. When or if it becomes necessary to broaden the scope of subjects to be negotiated, there are several alternatives. Among these are to include additional specific items concerning teacher working conditions but, be very wary of the term "working conditions" or phrases like "terms and conditions of employment" because this can and has been interpreted as being a definition of a very broad bargainable subject matter.

Agreements to bargain over working conditions would, of course, open the door to many items which you may consider to be within your management rights. For example, it has been argued that "working conditions" includes such things as the determination of the school calendar, the school day, promotion and transfer procedures for teachers, class assignments, class size, special education provisions, staff facilities and equipment, maintenance of standards relative to who will do what and under what circumstances, full instructional and professional staffing, teacher protection, academic freedom, staff facilities, emergency school closing, in service training, teacher retirement, general employment practices, professional dues deductions and professional responsibilities, summer school and the like.

It is a far better concept to specifically delineate specifically those items that you are agreeable to negotiating.

In some situations, you may well find yourself asking as to whether a given item is a "policy matter" or a "working condition."

Now on the other hand, you might say, with the term "working condition", that you do have some room to say "no, that's not negotiable" when you feel strongly that the teacher organization is attempting to obtain illegitimate power over the board policy making authority through demands brought to the bargaining table which go beyond any reasonable definition of working conditions. However, that may be a bit "Pollyannish." You might also note, in passing, that"working conditions" or a similar concept is the definition of a bargainable subject matter most likely to be embodied in most negotiation legislation.

In any event, boards, in defining negotiable subject matter, should be cautioned in agreeing to any words or phrases which might commit them to bargaining over important school district policy. For example, the phrase "other matters of mutual concern", while vague, definitely implies subjects which would fall within the policy realm. This type of language basically guarantees that much time will be wasted in the negotiating process as to the question of what is negotiable.

One of the things that we probably should take into consideration is the concept that Peter Drucker once enunicated - the key to good management lies in understanding the "90-10" rule. 90% of the sales of the company are generated by 10% of its products. 90% of the work of the purchasing department is directed to 10% of what is buys. The 90-10 rule also has broad application in school board negotiations.

By a strange querk, 90% of the time spent in the negotiating session concerns matters that have little iportance. Of all of the issues that we discuss, those that represent 90% of the value take up 10% of the time. 10% of the concessions involve 90% of the union-board movement. In negotiations, as in managment, perspective is important. Before you go into negotiations, question your priorities and ask yourself whether it would not be best to give equal time to all the issues. Perhaps, it is to your advantage to leave just a little time for the big matters and lots of time for the little ones. Perhaps, it is you who should make the nine small concessions and let the union make the one big one.

Many times too we discuss "non-negotiable" demands, but, are they really negotiable? Do theyserve a role at the bargaining table? They do. Non-negotiable demands generally are those which are so extreme that a compromise appears virtually impossible. At stake are deep rooted values that are of ethical, ingrained policy, professional or economic in nature. The introduction or repulsion of such demands generally creates hostility because it threatens allegedly important beliefs, whether it be on your side or on the teacher's side.

The oddity of non-negotiable demands, is that they can help the negotiator rally his own people at the same time he defuses the opposition. By making extreme demands, a negotiator may mistakenly feel he can demonstrate conviction. When non-negotiable demands are mixed with more moderate ones, the negotiator has a chance to give large numbers in the organizational spectrum and equity in the outcome.

Non-negotiable demands often lower the expectations of an opponent. They make you more willing to compromise somewhere rather than risk a serious confrontation of values. There are usually some people in the opponent group who believe that the extreme demands have partial merit. However, we need only go back a few years when certain black militant groups demanded reparations for some 300 years of slavery. Most people thought it was crazy. Later though, some church groups saw fit to honor the claim. As a result, we see, immediately that not everyone defines a non-negotiable item in the same way.

Sometimes things are non-negotiable because they are in violation of the law or just contrary to basic good common sense. Non-negotiable demands are appropriate under some circumstances. We must not make them though, unless we have considered the cost of deadlock, the degree of mutual dependence, backlash, face saving and our own ability to muster support for an extreme demand.

Non-negotiable demands have always been part of bargaining. Therefore, what do we do when we hear them for the first time. Sometimes, counter measures may help you to determine what is "negotiable" at the bargaining table. Consider, for example, the following reactions:

1. Conduct off the record talks.
2. Don't provoke further hostility.
3. Explain why the demands are non-negotiable.
4. Strengthen the resolve of our group by getting everyone involved and that means the community too.

5. Let the public understand how reasonable the position of the board is.
6. Be prepared to discuss those issues that are negotiable.
7. Don't be afraid to use your strength with discretion.
8. Don't panic.

Non-negotiable demands are dangerous for the party making them. They can so inflame the other side, that deadlock becomes inevitable on all issues. Yet, most such demands turn out to be somewhat negotiable if good reasons are given and sufficient time is provided for acceptance of the non-negotiable idea.*

Using this concept, you should also be aware that it can indeed work against the faculty association. The school board is elected by the community to do certain jobs and the community has the right to look to the board to fulfill that responsibility. If the Board fails to do it, then certainly what you may consider to be a non-negotiable demand will become a negotiable demand not only from the teacher's point of view, but from the electorates also.

How do we avoid then the problems that sometimes come into the area of policy making? The answer is simple. We allow the faculty association, individual teachers and the community to have input through our board to give us their ideas and concepts. We respect those ideas and concepts, we

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* See C. L. Karras, "Give and Take," The Complete Guide to Negotiating Strategies and Factors, (1974).

discuss them with the community, the faculty association or the individual and then we attempt, by considering all of the information available to us, to resolve those questions. If we do that, then some of the outlandish demands that are being made by teacher unions across this country will not necessarily come back to haunt us, but, rather, it must haunt them. In other words, neogitating what is negotiable may be the only answer.*

One of the approaches that may be taken when things are "non-negotiable" is to make a counterproposal which will be unacceptable to the other side. The common blackmail characteristics of so-called professional negotiators, the threat

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* In my district, we have decided that the following items are subject to negotiation, but, not necessarily, conclusion:

1. Basic salary schedule
2. Stipends for additional training
3. Stipends for extra duties
4. Intra-district travel
5. Insurance programs
6. Payroll deductions
7. Leaves
8. Negotiation procedures
9. Recognition
10. Grievance procedures
11. Other fringe benefits
12. Term of the agreement
13. Teacher and association rights
14. Teaching day
15. In service training
16. Emergency school closing
17. Retirement

of taking the public dollars and public rights through the threat of strike or slick legal manuveuring in return for absolutely nothing, is not the way to decide what is negotiable. One author has classified an approach to this by establishing a compendium of counterproposals. These go from accomodation, to interdiction where the purpose is to block a particularly dangerous proposal, usually by putting the shoe on the other foot. An example of this would be a proposal that would be one wherein the association will propose "the board shall consult with the association on any fiscal, budgetary or tax programs, construction programs, considered or proposed annexation or consolidation or revision of the educational policy..." The counterproposal would read: "The association shall consult with the board on any budgetary, fiscal or financial matter... and shall not act upon such matters until the board has made its recommendation on each specific matter."

Where a dangerous proposal would put public policy in the hands of the union, the interdiction proposal would subject the association's private affairs to schol board scrutiny.

But from this speaker's view, let us not find ourselves in the position where we are afraid to say "yes" or worse yet, to say "no" because we, as board members, have failed to do our job. If we have done it, we should not fear "talking" about just about anything a teacher's union may wish to propose.